No. 715

In the Supreme Court of the United States

OCTOBER TERM, 1939

THE UNITED STATES OF AMERICA, PETITIONER

v.

ARLENE SUMMERLIN, AS ANCILLARY ADMINISTRATRIX OF THE ESTATE OF J. F. ANDREW, DECEASED

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The orders of the County Judge's Court (R. 11) and of the Circuit Court for Polk County, Florida (R. 15) were entered without opinions. The opinion of the Supreme Court of Florida (R. 22–23) is reported in 191 So. 842.

JURISDICTION

The judgment of the Supreme Court of Florida was entered on November 10, 1939 (R. 23). The petition for a writ of certiorari was filed February 10, 1940, and was granted March 25, 1940. The

jurisdiction of this Court rests upon Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether a state statute, providing that no claim against the estate of a deceased person shall be valid unless filed in the office of the County Judge within eight months from the time of the first publication of the notice to creditors, may be applied to a claim of the United States against the estate.

STATUTE INVOLVED

Section 5541 (92) of the Permanent Supplement, Compiled General Laws of Florida (1927), which deals with the time within which claims may be filed against the estate of a decedent, provides:

> No claim or demand, whether due or not, direct or contingent, liquidated or unliquidated, or claim for personal property in the possession of the personal representative or for damages, shall be valid or binding upon an estate, or upon the personal representative thereof, or upon any heir, legatee or devisee of the decedent unless the same shall be in writing and contain the place of residence and post office address of the claimant and shall be sworn to by the claimant, his agent or attorney and be filed in the office of the county judge granting letters. Any such claim or demand not so filed within eight months from the time of the first publication of the notice to creditors shall be void even

though the personal representative has recognized such claim or demand by paying a portion thereof or interest thereon or otherwise: Provided, however, that the lien of any duly recorded mortgage and the lien of any person in possession of personal property and the right to foreclose and enforce such mortgage or lien shall not be impaired or affected by failure to file claim or demand as hereinabove provided, but such failure shall bar the right to enforce any personal liability against the estate, and the claimant shall be limited to the enforcement of the mortgage or lien against the specific property so mortgaged or held. Nothing herein contained shall be construed to require any legatee, devisee or heir at law to file any claim for the share or interest in the estate to which he may be entitled.

STATEMENT

One J. F. Andrew, the respondent's decedent, executed to one W. B. Craig, a promissory note for $839.86, payable in thirty-six equal monthly installments (R. 8). The note was in due course assigned and transferred to Johns-Manville Credit Corporation (R. 5). The note, given to finance the improvement of certain property of Andrew (R. 4, 10), was insured by the United States under the National Housing Act, c. 847, 48 Stat. 1246 (R. 4–5). Andrew defaulted in the payment of the note (R. 6), and the Johns-Manville Credit Corporation made claim upon the Federal Housing

Administrator for $525.19, the balance due on the note (R. 6). The claim was paid by the Administrator through a draft drawn on the Treasurer of the United States (R. 6). The Johns-Manville Credit Corporation thereupon assigned the note to the Federal Housing Administrator acting on behalf of the United States (R. 6).

The maker of the note, Andrew, died, and the respondent Arlene Summerlin was appointed ancillary administratrix of his estate by the County Judge of Polk County, Florida (R. 1). Thereafter, on August 13, 1937, the respondent gave notice by publication to the creditors of the estate of J. F. Andrew, deceased, to file proof of their claims against the estate within eight months as required by law (R. 1, 2).

On July 1, 1938, the United States filed in the office of the County Judge of Polk County, Florida, proof of its claim against the estate of J. F. Andrew, deceased, in the amount of $525.19 with interest, together with a petition for an order allowing the claim and declaring it to be entitled to priority under Revised Statutes, sections 3466 and 3467 (R. 3).[1] The County Judge, on August 19, 1938, denied the petition and disallowed the claim of the United States because it was not filed within

[1] The proof of claim filed by the United States refers to "Proof of Claim executed against the estate of J. F. Andrew by the Johns-Manville Credit Corp. on June 29, 1936" (R. 6). The proof of claim thus referred to was, although the record does not so reveal, filed in New Jersey, where the decedent was domiciled.

eight months after notice by publication was given to the creditors (R. 11).

The United States appealed from this order to the Circuit Court for Polk County, Florida, which affirmed (R. 15). On further appeal the Supreme Court of Florida affirmed the order of the Circuit Court (R. 23).

SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of Florida erred:

1. In holding that the state statute limiting the time within which claims must be filed against a decedent's estate validly applied to the United States.

2. In holding that the claim of the United States was void for failure to comply with the state statute.

3. In affirming the judgment of the Circuit Court.

SUMMARY OF ARGUMENT

The immunity of the United States from state statutes of limitations or common law doctrines of laches is well settled. It extends to proceedings for the enforcement of all claims of the United States, whether the right asserted is conferred by federal enactment or acquired pursuant thereto but founded on state law, and the obligation to give it effect rests upon the state courts no less than upon the courts of the United States.

The Florida non-claim statute, it is true, like those of other states, is not a general statute of

limitations but a special provision designed to expedite distribution of estates to the heirs and intended beneficiaries and to protect the distributees in the undistributed enjoyment of their possession. Cf. *Brooks* v. *Federal Land Bank*, 106 Fla. 412, 422–423; *Pufahl* v. *Estate of Parks*, 299 U. S. 217, 228. But the distinction between statutes limiting the period for proof of claims against the executors or administrators and general statutes of limitations affords no basis for a contention that the Government's immunity is limited to the latter alone. The Government's immunity extends to actions involving title to real estate, even though the general statute of limitations as applied to private individuals operates to extinguish the right as well as the remedy.

It is immaterial that the claim in this case is founded on a note. The United States, as maker and holder of negotiable instruments, is bound by all rules of the law merchant designed to promote the marketability of commercial paper, but this is so for the reason that the public interest of the United States as well as of individuals is served by the enforcement of such rules, and the United States is presumed, therefore, to have intended to waive any immunity from a defense of laches. It is well-settled, however, that the Government's immunity extends to suits against the maker to enforce claims founded on negotiable instruments. It is likewise immaterial that the claim of the

United States was acquired in the performance of federal functions which are similar in some respects to a private insurance or banking "business." Contention to the contrary is foreclosed by the decisions of this Court.

No contention is or could be made that the provision of the National Housing Act authorizing the Federal Housing Administrator to "sue and be sued" constitutes a waiver of the Government's immunity as a plaintiff from state statutes of limitations. In any event, the present claim is concededly founded on a debt owing the United States, and any waiver of immunity as to claims of the Federal Housing Administrator does not extend to claims of the United States.

ARGUMENT

THE CLAIM OF THE UNITED STATES IS NOT BARRED BY THE FAILURE TO FILE IT WITHIN THE PERIOD PRESCRIBED BY THE FLORIDA STATUTE.

1. It is well settled that the United States enjoys a sovereign immunity from the defense of state statutes of limitations or common law doctrines of laches. *United States* v. *Thompson*, 98 U. S. 486; *United States* v. *Nashville, Chattanooga & St. L. Ry. Co.*, 118 U. S. 120, 125; *United States* v. *Insley*, 130 U. S. 263; *Stanley* v. *Schwalby*, 147 U. S. 508, 514–517; *Chesapeake & Delaware Canal Co.* v. *United States*, 250 U. S. 123; *Davis* v. *Corona Coal Co.*, 265 U. S. 219; *Phillips* v. *Commis-*

sioner, 283 U. S. 589, 602; *Guaranty Trust Co.* v. *United States*, 304 U. S. 126, 132; *Board of County Commissioners, Jackson County, Kansas* v. *United States*, 308 U. S. 343; *United States* v. *Hoar*, 2 Mason 311, Fed. Cas. No. 15,373; *United States* v. *Backus*, 6 McLean 443, Fed. Cas. No. 14,491; cf. *United States* v. *Whited and Wheless*, 246 U. S. 552; *Dupont de Nemours & Co.* v. *Davis*, 264 U. S. 456. Whatever the historic origin of the doctrine, "the rule is supportable now because its benefit and advantage extend to every citizen . . . whose plea of laches or limitations it precludes; and its uniform survival in the United States has been generally accounted for and justified on grounds of policy rather than upon any inherited notions of the personal privilege of the king." *Guaranty Trust Co.* v. *United States*, 304 U. S. 126, 132. And since the immunity is a matter of federal law, submission to local statutes of limitations cannot be required as a condition of access to state courts. *Davis* v. *Corona Coal Co.*, 265 U. S. 219. Cf. *United States* v. *Bank of New York & Trust Co.*, 296 U. S. 463, 479; *United States* v. *Shaw*, No. 570, this Term, decided March 25, 1940.

2. While this Court has never decided a case involving a state statute limiting the period for the exhibition and proof of claims against executors and administrators, the lower federal courts and, so far as we have been able to ascertain, all the state courts which have passed upon the question other than those of Florida, have held that

the Government's immunity extends to such statutes. Mr. Justice Story, while on circuit, so held in the often cited case of *United States* v. *Hoar*, 2 Mason 311, Fed. Cas. No. 15,373 (C. C. D. Mass.). Accord: *United States v. Backus*, 6 McLean 443, Fed. Cas. No. 14,491 (C. C. D. Mich.); *United States* v. *Houston*, 48 Fed. 207 (D. Kan.); *United States v. Adams*, 54 Fed. 114 (C. C. D. Nev.); *Pond* v. *United States*, 111 Fed. 989 (C. C. A. 9th); *Pond* v. *Dougherty*, 6 Cal. App. 686; *Harrison* v. *Deutsch*, 294 Ill. App. 8; cf. *Davis* v. *Bargloff*, 200 Ia. 1160; *United States* v. *Holt*, 131 S. W. (2d) 59 (Mo. 1939).[2] The principles announced in the decisions of this Court fully support the conclusion thus reached by the state and lower federal courts.

3. The claim of the United States, for priority of payment out of the assets in the hands of the respondent administratrix, is founded on the express provisions of federal statutes (R. S. secs. 3466, 3467, 31 U. S. C., secs. 191–192), and the immunity of the United States from the defense of state statutes of limitations or laches is implied in every federal enactment. *Board of County Commissioners, Jackson County, Kansas* v. *United*

[2] *United States* v. *Hailey*, 2 Idaho 26, is not opposed. That case merely held that a provision of a state statute that recovery could not be had against an administrator unless the claim had previously been presented to the administrator was binding on the United States. The question whether the limitation of time for presentation bound the Government was expressly distinguished (*id.* 29).

States, 308 U. S. 343.[3] But it is immaterial whether the right asserted is founded on an act of Congress or on a claim acquired pursuant to a federal enactment but owing its force and effect to the law of the State of Florida. The United States enjoys immunity from state statutes of limitations or laches in either case. The Government's immunity extends, for example, to suits to recover on bonds

[3] The petition and proof of claim recited that the claim was "a debt due and owing the United States of America within the meaning of section 191 and section 192 of Tit. 31, U. S. C. A., and that the same is, therefore, a preferred claim against the Estate of the said J. F. Andrew, deceased * * *" (R. 3). The note in controversy was assigned to the Federal Housing Administrator "acting on behalf of the United States of America" (R. 8). The petitioner's claim is thus founded on a debt "due to the United States" within the meaning of R. S. sections 3466–3467. *Wagner* v. *McDonald*, 96 F. (2d) 273 (C. C. A. 8th); *In re Dickson's Estate*, 197 Wash. 145. Respondents substantially so conceded in their brief filed in the court below.

Moreover, without regard to R. S. sections 3466, 3467, the right to collect the sum owing on the note from decedent's estate, while embodied in a state statute, is attributable to the law of the United States which authorized the acquisition of the note. The extent of the contractual obligation, to be sure, is defined by the law of Florida, the state in which the note was executed and delivered. See *Pufahl* v. *Estate of Parks*, 299 U. S. 217; cf. *Keyser* v. *Hitz*, 133 U. S. 138, 150–152. But Congress may constitutionally provide a remedy for the enforcement of all rights belonging to the United States, whether created by federal enactment or merely acquired pursuant thereto, and the remedies available for the collection of the claim in controversy may therefore be attributed to the law of the United States. Cf. *Board of County Commissioners, Jackson County, Kansas* v. *United States*, *supra*.

or shares of stock executed pursuant to state law but acquired by the United States in the performance of federal functions (*United States* v. *Nashville, Chattanooga & St. L. Ry. Co.*, 118 U. S. 120, 125; *Chesapeake & Delaware Canal Co.* v. *United States*, 250 U. S. 123), to suits to enforce the liability of transferees of corporate assets, whether or not the liability of the transferee was created by local law (*Phillips* v. *Commissioner*, 283 U. S. 589, 602), and to suits to try title to realty (cf. *Stanley* v. *Schwalby*, 147 U. S. 508, 514–517), to enforce an equity of redemption after foreclosure (*United States* v. *Insley*, 130 U. S. 263), or to recover for negligent injury to realty (*Davis* v. *Corona Coal Co.*, 265 U. S. 219), although the title to the property is in each instance founded on state law. Indeed, so far as we have been able to ascertain, only once has the contention been advanced in this Court that the United States is bound by state statutes of limitations when asserting a right created by the local law, and in that case the contention was summarily rejected by this Court. *Phillips* v. *Commissioner*, *supra*.

While the rule and its application are thus well-settled by the decisions of this Court, the conclusion should be the same even if the question were now presented as one of first impression. In *Board of County Commissioners, Jackson County, Kansas* v. *United States*, 308 U. S. 343, 351, this Court observed: "* * * the immunity of the sovereign

from these defenses is historic. Unless expressly waived, it is implied in all federal enactments." Since the benefit and advantage of the rule extend to all the public, to the states and individuals whose plea of laches or limitations it precludes as well as to the United States, the immunity should apply whether the right asserted is created by a federal statute or is merely acquired pursuant thereto but founded on the law of a state. Cf. *Guaranty Trust Co.* v. *United States*, 304 U. S. 126, 132–133, 135. The "great public policy of preserving public rights, revenues, and property from injury and loss, by the negligence of public officers" (per Story J. in *United States* v. *Hoar*, *supra*, 2 Mason at 314, 26 Fed. Cas. at 330) forcibly suggests that the immunity impliedly contained in all federal enactments was intended by the Congress to protect the interest of the United States in either case. The immunity here asserted is thus an implied provision of the National Housing Act,[1] pursuant to which the note in controversy was acquired, and applies with equal force whether the right asserted is one created by that statute or other federal enactment, or is acquired in the exercise of a federal function but founded on the law of the states. In this view, it is immaterial whether the right to be paid out of the assets of a

[1] Act of June 27, 1934, c. 847, 48 Stat. 1246, Title I, as amended by the Act of August 23, 1935, c. 614, 49 Stat. 684, 722, and the Act of February 3, 1938, c. 13, 52 Stat. 8, 12 U. S. C. Supp. V, secs. 1701–1705.

decedent's estate in Florida is one created by the local common law or is a creature of state statute. Cf. *Phillips* v. *Commissioner*, 283 U. S. 589, 602; *United States* v. *Minor*, 235 Fed. 101 (C. C. A. 4th); *United States* v. *Kendall*, 263 Fed. 126 (D. C. La.); but cf. *United States* v. *Harpootlian*, 24 F. (2d) 646 (C. C. A. 2d); *Denver & R. G. R. Co.* v. *United States*, 241 Fed. 614 (C. C. A. 8th); *United States* v. *Miller*, 28 F. (2d) 846 (C. C. A. 8th); *Thompson* v. *Avery*, 11 Utah 214.[5]

[5] The record does not disclose whether the decedent's estate in Florida consisted of personalty or realty or both. At common law the personal property of a decedent was charged with the payment of his debts (*Snelling's Case*, 5 Co. Rep. 82b; *Norwood* v. *Read* (1557) Plowden 180; *Pinchon's Case* (1612) 9 Co. Rep. 86b), but, for reasons peculiar to the feudal system, the realty was not subject to such charge save in a narrow class of cases. Schouler, *Executors and Administrators* (1883), sec. 212. The distinction has been abolished by statute in almost every state in the Union. *Schouler, loc. cit. supra.*

The fact that the right here asserted may be one which the State of Florida was theoretically at liberty to grant or withhold does not determine the scope of the Government's immunity, whether viewed as an incident of the Government's constitutional sovereignty or as an implied provision of the federal enactment pursuant to which the note in controversy was acquired. Thus the jurisdiction of the federal courts with respect to controversies founded on rights created by state statute is controlled by the Federal Constitution, and the states are without power to confer exclusive jurisdiction on the local courts in such cases. *Railway Company* v. *Whitton*, 13 Wall. 270; *Dennick* v. *Railroad Company*, 103 U. S. 11; *Traction Company* v. *Mining Company*, 196 U. S. 239; cf. *Suydam* v. *Broadnax*, 14 Pet. 67; *Lawrence* v. *Nelson*, 143 U. S. 215; *Security Trust*

4. The court below recognized that a general state statute of limitations could not be applied to the claim of the United States (R. 23), but concluded that "a statute of non claim for the orderly and expeditious settlement of the estates of decedents" was governed by a different principle. The constitutional immunity of the United States may not be defeated, however, by a state policy to make "expeditious settlement of estates" any more than by the state policy, embodied in general statutes of limitation, to "protect the citizens from stale and vexatious claims." *Guaranty Trust Co.* v. *United States*, 304 U. S. 126, 136.

The Florida non-claim statute, like those of other states, differs from general statutes of limitations in only two respects. See Note, 36 Mich. L. Rev. 973, 974–975. First, the statutory period of eight months is considerably shorter than that provided by most general statutes of limitations. This distinction would seem to suggest, however, that the reasons of public policy which underlie the sovereign immunity apply with even greater force to

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Co. v. *Black River National Bank*, 187 U. S. 211. And the decisions of this Court establish that, in conformity with historic precedent, the United States may take the benefit of state statutes though it is not bound by the limitations contained therein. Cf. *Stanley* v. *Schwalby*, 147 U. S. 508, 514–517. The scope of the Government's immunity arising under the laws of the United States is accordingly to be determined by the federal purpose and policy which it is intended to serve and is not affected by the fact that the particular right in controversy is one created by state statute.

such a statute than to general statutes of limitation. Secondly, the Florida statute provides that claims not filed in the office of the County Judge within eight months "shall be void."[6] As this Court observed with respect to a similar distinction suggested in *Davis* v. *Mills*, 194 U. S. 451, "it is quite incredible" that the scope of the Government's immunity should depend on "such an unsubstantial distinction * * *" (*id.* 456). Moreover, the United States is not bound by state statutes limiting the period in which title to real estate may be asserted (*Gibson* v. *Chouteau*, 13 Wall. 92; *United States* v. *Insley*, 130 U. S. 263; *Stanley* v. *Schwalby*, 147 U. S. 508, 514–517), even though such statutes, as against private individuals, extinguish the right as well as the remedy. *Campbell* v. *Holt*, 115 U. S. 620, 623; *Stewart* v. *Keyes*, 295 U. S. 403, 416–417.

As appears from a prior opinion in a related case,[7] the court below may have viewed the Florida non-claim statute as a regulation of the procedure

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[6] Most non-claim statutes provide that claims not filed within the statutory period "shall be forever barred." See Note, 36 Mich. L. Rev. 973.

[7] In *Brooks* v. *Federal Land Bank*, 106 Fla. 412, the Florida Supreme Court observed (p. 422):

> A statute of non-claim while partaking of the nature of a statute of limitations is not wholly such. It constitutes part of the procedure of court, the orderly, expeditious, and exact settlement of the estates of decedents and constitutes part of the procedure which courts must observe in the settlement of estates of deceased persons and where no exemptions from the provisions of the statute exist the court is powerless to create one.

or jurisdiction of the local courts in the probate of estates, a subject in general within the exclusive control of Florida.[8] The conclusive answer is that the state courts are bound to give effect to any immunity arising under the laws of the United States when asserted in a case within their jurisdiction, and this duty cannot be evaded upon the ground that the immunity conflicts with a state statute regulating procedure or jurisdiction of the local forum. In *Davis* v. *Corona Coal Co.*, 265 U. S. 219, 223, this Court, speaking through Mr. Justice Holmes, said:

> If the section of the Louisiana Code after the limitation that it expresses went on to say that the United States is forbidden to sue in the courts of the State upon such claims over a year old, although but for this limitation it might, the exception could not be maintained. * * *

It may be observed in passing that the states cannot limit jurisdiction with respect to the proof of claims against administrators or executors to the state courts to the exclusion of the federal courts. *Lawrence* v. *Nelson, supra.*

5. The court below sought to support the application of the Florida non-claim statute to the United States upon the ground that the Government's claim was acquired in the operation of a "commercial enterprise." The court said (R. 23):

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[8] See "Limitations on the Power of the States to control the Jurisdiction of Their Courts" (1934), 34 Columbia L. Rev. 1116.

> In this holding, we have not overlooked the cases cited by appellant. They have been read but they do not apply to statutes such as we are confronted with in this case. They treat rather the application of statutes of limitations which in many instances do not apply to State or Federal governments. Neither are such governments bound by laches or estoppel but such rules are not involved in this case. When governmental entities depart from their sovereign function and compete with private citizens in business, they should be bound by the same rules.

It is not clear from the opinion whether the court below regarded as material the circumstance that the Government's claim was founded on a note, negotiable prior to default on maturity, or relied solely on the fact that the note was acquired in the conduct of an insurance "business." In either event, the court's position is untenable.

The court cited *Cooke* v. *United States*, 91 U. S. 389, and *United States* v. *Barker*, 12 Wheat. 559, which formulate the rule that "when the United States become parties to commercial paper, they incur all the responsibilities of private persons under the same circumstances." (91 U. S. at 396). This principle obviously has no application here. The rules of the law merchant are designed to promote the marketability of commercial paper, and the United States impliedly intends to be bound thereby for the reason that "from the daily and

unavoidable use of commercial paper by the United States, they are as much interested as the community at large can be, in maintaining these principles." *United States* v. *Bank of Metropolis*, 15 Pet. 377, 392. The reach of the doctrine of the *Cooke* case extends no further than the reason underlying it, and it has no application, therefore, to suits against the maker to recover on negotiable instruments after maturity. In such cases, it is settled, the United States is not bound by state statutes of limitations. *United States* v. *Nashville, Chattanooga & St. L. Ry. Co.*, 118 U. S. 120, 124–125.

It is likewise immaterial that the Government's claim was acquired in its "business" of insuring loans for the construction or renovation of homes. So long as the function is one authorized by the Constitution, it is a "governmental" activity and the immunities of the United States are not defeated by characterizing the function as "proprietary", or as a "business." *Graves* v. *New York ex rel. O'Keefe*, 306 U. S. 466, 477; *Pittman* v. *Home Owners' Loan Corp.*, 308 U. S. 21, 32.

Chesapeake & Delaware Canal Co. v. *United States*, 250 U. S. 123, would in any event foreclose in this case, any contention that the United States is barred by the state statute because it acquired the note in a "business". In that case the United States, a stockholder in the defendant corporation, sued to recover dividends. The state statute of limitations was invoked as a bar to the action. The defendant's principal contention was that the

Government, by becoming a stockholder in a private corporation, had waived its governmental immunity and was bound by state statutes of limitations to the same extent as a private individual. Particular reliance was placed on *Bank of United States* v. *Planter's Bank*, 9 Wheat. 904, in which this Court held that a state's sovereign immunity from suit was not imparted to a private bank by reason of the fact that the state owned some of the stock of the bank, and upon the familiar dictum of Chief Justice Marshall that, "when a government becomes a partner in any trading company, it divests itself, so far as concerns the transactions of that company, of its sovereign character, and takes that of a private citizen. Instead of communicating to the company its privileges and its prerogatives, it descends to a level with those with whom it associates itself, and takes the character which belongs to its associates and to the business which is to be transacted." (*Id.* 907.) The Court rejected the contention and observed (250 U. S. at 126):

> If the Government were asserting any rights with respect to the conduct of the corporation's affairs, its contracts or its torts, then its rights, duties and privileges would be no greater than those of any stockholder. *Bank of the United States* v. *Planters' Bank*, 9 Wheat. 904, 907. But here the Government is pursuing a right to recover, which is not affected by its relation to the corporation as a stockholder. The declaration of the dividends, which is admitted, gave it

> the status of a creditor of the company, and thereafter, the right to recover was unaffected by any stockholder relation. To this must be added that the statutes and rules of limitation relate to the remedy to enforce the right, and not to the corporate relation from which the right springs, and that, since these dividends constituted "public money" applicable to public purposes only, the Government in collecting them was acting in its governmental capacity as much as if it were collecting taxes, such as those with which, no doubt, the stock which produced the dividends was purchased.

The Circuit Court of Appeals in the same case observed (223 Fed. 926, 928):

> The Delaware statute is not specially concerned with the rights of stockholders as such, it is dealing with the rights of creditor plaintiffs, no matter how such rights have been acquired * * *

A similar observation may be made with respect to the contention here advanced. So far as expeditious liquidation of estates is concerned, which is the end to which the non-claim statute is directed, it is immaterial whether the claims are based on commercial paper or derived from some other source, and it is immaterial what was the precise nature of the federal activity which gave rise to the claim. Certainly, the Florida statute makes no distinction between different types of claims.

6. No contention is or could be made that the provision of the National Housing Act authorizing

the Federal Housing Administrator to "sue and be sued" constitutes a waiver of the immunity of the United States from state statutes of limitations or laches. This provision was no doubt intended to limit legal irresponsibility of the United States as a defendant, but it in no way relates to the immunity of the United States or its agencies as a plaintiff. Cf. *Dupont de Nemours & Co.* v. *Davis*, 264 U. S. 456. Moreover, the claim here asserted is admittedly founded on a debt owing to the United States, and the waiver of immunity as to the Federal Housing Administrator does not extend to claims of the United States, even though acquired from or through the Federal Housing Administration. Cf. *Federal Housing Administration* v. *Burr*, No. 354, this Term, decided February 12, 1940; *United States* v. *Shaw*, No. 570, this Term, decided March 25, 1940.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decision of the court below should be reversed.

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APRIL, 1940.

APPENDIX

R. S. § 3466, 31 U. S. C., sec. 191:

> Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

R. S. § 3467, 31 U. S. C., sec. 192:

> Every executor, administrator, or assignee, or other person, who pays any debt due by the person or estate from whom or for which he acts, before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate for the debts so due to the United States, or for so much thereof as may remain due and unpaid.

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